

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

November 17, 2011

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Citizen's Guide Draft
Diana DeJesus, RTK AC Law School Extern
3. Updates from Subcommittees, Subcommittee recommendations
 - Bulk Records Subcommittee
Mike Cianchette
 - Legislative Subcommittee
Judy Meyer
 - Public Records Exceptions Subcommittee
Shenna Bellows
4. Other?

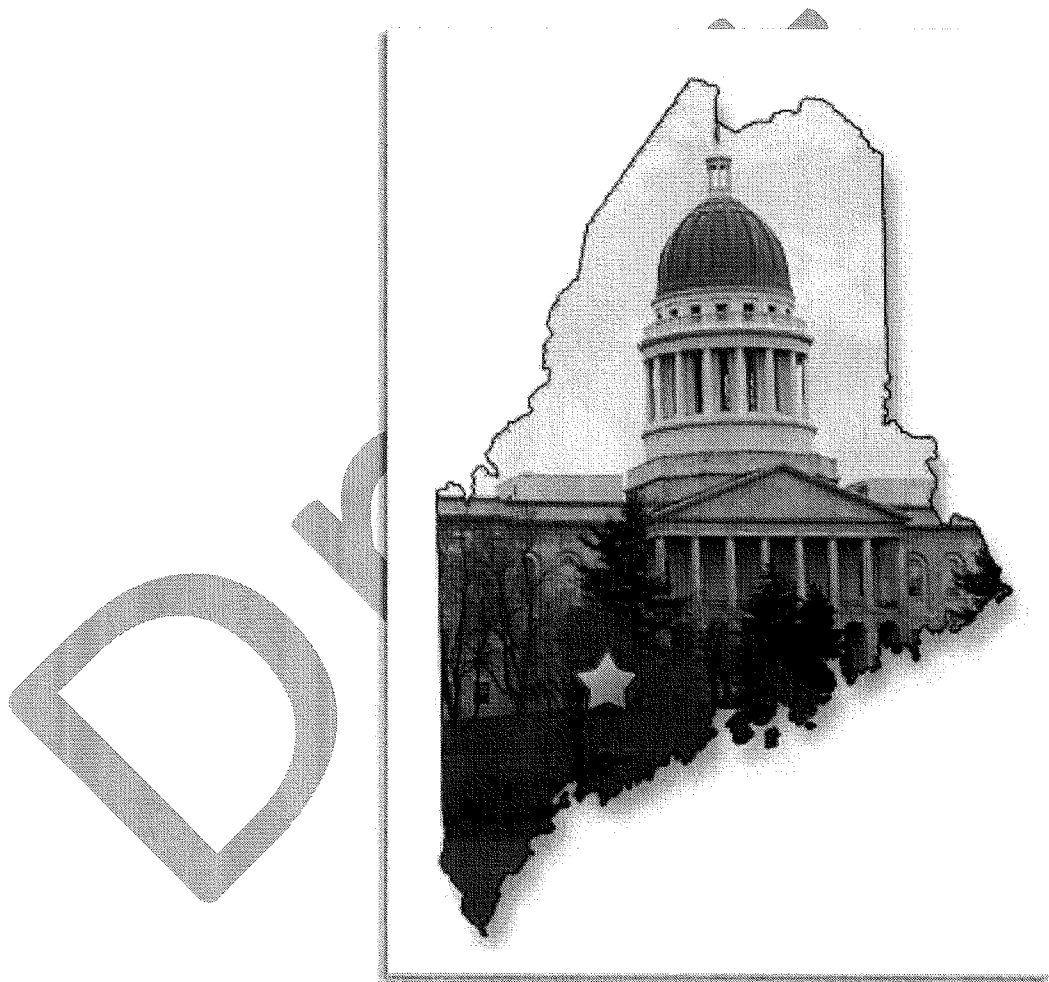
Adjourn

Scheduled meetings:

Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

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A Citizen's Guide to Using The Maine Freedom of Access Act



Maine Right-To-Know Advisory Committee
2011

www.maine.gov/foaa

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Introduction

Maine Freedom of Access Act (“FOAA”):

The Purpose



The public's right to information about government activities lies at the heart of a democratic government.

The Maine Freedom of Access Act (“FOAA”) grants the people of this state a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The act also ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Transparency and open decision-making are fundamental principles of the Maine Freedom of Access Act, and they are essential to ensuring continued trust and confidence in our government.

Open government is good government and the state is committed to ensuring and protecting your “right to know.”

To review the Freedom of Access Law, go to <http://www.maine.gov/foaa/law/index.htm> .

Chapter 1: Freedom of Access Act: An In-Depth Review

What is the Freedom of Access Act (“FOAA”)?

It is a Maine state statute that is intended to open the government of Maine by guaranteeing access to the “public records” and “public proceedings” of state and local government bodies & agencies.

FOAA does NOT apply to federal agencies operating in Maine or to federal government records. The “Freedom of Information Act,” a similar but different federal statute, applies to the federal government. This federal statute does not apply to state or local government bodies, agencies, or officials.¹

Elected Officials and the Freedom of Access Laws:

As of July 1, 2008, elected officials are obligated to complete training on Freedom of Access laws. The training, which must be completed less than 2 hours, includes instruction in:

- General legal requirements when dealing with public records and public proceedings
- Procedures and requirements regarding complying with a request for a public record
- Penalties and other consequences for failure to comply with the law

The elected officials that are required to take the Freedom of Access training include:

- The Governor
- Attorney General, Secretary of State, Treasurer of State, and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate, and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors, and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts, or regional transportation districts

Once training is complete, elected officials certify the Freedom of Access training by

- Submitting a written or electronic record confirming that the training was completed
- Record will be available to public, must be kept by the elected official or filed with the public entity to which the official was elected.²

¹ Text of Freedom of Information Act can be found at 5 U.S.C. § 551 et seq., at <http://www.usdoj.gov/oip/foiastat.htm>.

² See Appendix A for sample training completion form.

Penalties for Failure to Comply with Freedom of Access Laws

If a state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws, he or she may be held liable for a civil violation, which could result in a fine of \$500.³

No criminal penalties exist for failure to comply with a request for public records. If, however, there is an intentional removal, alteration, or destruction of documents, such act is a Class D crime.⁴

Enforcement of Freedom of Access Laws

Any aggrieved person may appeal to any Superior Court⁵ in the state to seek relief for an alleged violation of Freedom of Access Act.⁶

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful.⁷

³ 1. M.R.S.A. § 410.

⁴ 1. M.R.S.A. § 452.

⁵ See *Appendix B* for Superior Court Directory

⁶ 1. M.R. S. A § 409(1).

⁷ 1. M.R. S. A. § 410.

Chapter 2: Requesting Public Records

Requesting a Public Record: The Basics

- What exactly IS a “public record?” A public record is
 - Written, printed, or graphic matter, or electronic data with information
 - Either directly or after a translation into a visual or auditory format
 - In possession of a state entity or public official
 - Used in connected or relating to a public or governmental business
- Who can request a public record?
 - Per the language of the Freedom of Access Act (“FOAA”), “every person” has the right to inspect and copy public records, whether you be a citizen of Maine or not.⁸

You Want to Request a Public Record: What do you do?

- **Step 1:**
 - Determine which public agency you want to request from
 - Examples include: Dept. of Health and Human Services, Office of the Governor, and Office of Attorney General. See *Appendix A* for a complete list of contacts.
- **Step 2:**
 - In what form will you make your request? If in writing – which is NOT mandatory – make sure to:
 - **Be specific**- include the time frame, subject of record, etc. See *Appendix B* for a sample FOAA written request.
 - Here is an example: What if you want more information about active landfills around your home that accepts wood wastes. How do you request?

	Too broad	Too narrow	Reasonable	Exact
Written Request	<i>“All records on landfills”</i>	<i>“All records identifying landfills within 20 miles of 147 Main Street in Augusta.”</i>	<i>“All landfills in Augusta.”</i>	<i>“All landfills in Augusta that only accept wood waste.”</i>
Possible Issues	-Fees too high -Agency may be unable to locate request -Too vague	-Agency unable to locate records with that specific data	-may have more records, but still a narrower search	-better chance to locate file with exact request language

⁸ See 1. M. R. S. A. § 408 (1).

You Requested Public Information: What Happens?

- **Step 1: Fees**
 - No initial fee for submitting the FOAA request and no fee to inspect records.⁹
 - If you would like to *copy* records, no standard rate is set by the FOAA; an agency may charge a “reasonable fee.”¹⁰ Fee amounts include
 - Time spent to
 - Retrieve
 - Search
 - Compile or
 - Redact confidential information
- **Step 2: Determining fee amount**
 - Public agency **MUST** prepare an estimate, which may include the following charge of \$10 after the 1st hour for staff time, *per request*. Further breakdown includes
 - \$20 or more- public agency **MUST** notify you before proceeding
 - \$100 or more – public agency may require costs in advanced.¹¹
- **Step 3: Determine if unable to pay fee amount**
 - A public agency may, but not required to- waive part or all of the total fee IF
 - Indigent¹²
 - Release of public record is in public interest because it will likely¹³ contribute to public understanding of how government works¹⁴
 - Not primarily in commercial interest of the requestor¹⁵

What Happens After You Made Your Request? Do You ... ?

- *Receive acknowledgement of your request from the agency?*
 - Yes, within a “reasonable time.”
- *Have to provide clarification for request, if asked?*
 - Yes. An agency or official may ask for clarification concerning your request.
- *Have to state why you want a certain record?*

⁹ 1 M.R. S. A. § 408(3)(D).

¹⁰ 1. M.R. S. A. § 408 (A).

¹¹ 1. M. R. S. A. § 408(4) & (5)

¹² 1. M. R. S. A. § 408(6)

¹³ Id.

¹⁴ Id.

¹⁵ Id.

- No. Even though an agency is not prohibited from asking, you are NOT required to provide a reason and you CANNOT be denied solely for that reason.

The Public Agency Has Your Request: What Happens?

- Agency is to make the record(s) available “within a reasonable time.”
- You can schedule time for your inspection, translation, copying *so long as*
 - Within regular business hours
 - Do NOT affect regular daily activities
- You can be denied your request – in whole or in part – within **five (5)** working days of the request.¹⁶
- For public records that are a mix of public and private information, the agency can
 - Decide if record(s) has any confidential information that needs to be redacted or blackened out OR
 - Deny public access to the document
- Agency is NOT required to prepare reports, summaries, or contemplations of public records

You have been denied your request: How Do You Appeal?

- Step 1: Was your request a public record?
 - Under the FOAA, certain documents are NOT public record. Examples¹⁷ include
 - Those designated by statute,
 - Documents under legal privilege (such as an attorney-client privilege),
 - Medical records, and
 - Juvenile records
- Step 2: File a written Notice of Appeal
 - If you are unsatisfied with an agency’s decision to withhold a record, you can file, **within five (5) working days**, a written notice of appeal to any Maine Superior Court. See a list of superior courts in *Appendix C*.

Other General Points:

- Can you submit a “standing request?” If so, does the agency have to honor it?
 - A standing request – request that certain reports be sent to you automatically each month- are NOT honored.

¹⁶ 1 M. R. S. A. 409(1)

¹⁷ To determine if a record is public, use the searchable tool at <http://www.mainelegislature.org/legis/foa/>.

- Agency is only required to make available the request on the date of the request.
A new request for any additional records is required.
- *Can you ask a public official about my record?*
 - You may ask a public official about a record, but he/she are NOT required to explain or answer questions about public records.
 - Under FOAA, officials are ONLY required to make records available for inspection and copying
- *Can you request to look at a public official's email?*
 - Any record maintained by an agency or official can be public, whether in electronic form or hand-copy form
 - Email(s) is/are considered a public record IF
 - In possession of
 - Agency or public official
 - Political subdivision or
 - Custody of an association
 - Where membership is exclusively made up of one or more of any of the abovementioned entities
 - Has been received or prepared in connection for public or governmental business OR
 - Contains information relating to the transaction of governmental business, AND
 - Not confidential or an exemption under the FOAA.¹⁸

¹⁸ 1 M. R. S. A. 402(3).

Chapter 3: Public Proceedings

What is a “public proceeding?”

- The “transactions of any functions effecting any or all citizens of the State,” and applies to
 - Maine Legislature and its committees and subcommittees;
 - Any board/commission of state agency or authority, including University of Maine and the Maine Community College System;
 - Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;
 - Membership meetings of any association – members comprised of counties, municipalities, school districts, other political/administrative subdivisions, or their boards, commissions, agencies or authorities; and
 - Any advisory organization established, authorized or organized by law, resolved by executive order¹⁹

If it is a public proceeding, what happens?

- Requirements
 - Need to be open to the public AND
 - Any person must be permitted to attend²⁰
- Minutes
 - Not required under FOAA for public agency or body to keep running minutes; BUT
 - Required to
 - Keep written record of every decision that involves conditional approval or denial of application, license, certificate or permit; AND
 - Every decision that involves the dismissal or refusal to renew contract of any public official, employee or appointee²¹

¹⁹ 1 M. R. S. A. § 402.

²⁰ 1. M. R. S. A. § 403.

²¹ 1. M. R. S. A. § 407 (1) & (2).

- *If “adjudicatory proceeding”- as defined in Maine Administrative Procedure Act-
 - Need to compile that complies with statutory specifications, including recording in a form that allows for transcription.²²
 - If minutes provided, must be
 - Made promptly AND
 - Shall be open to public inspection²³
- Notice
 - Required for all public proceedings if includes a meeting of a body or agency of three (3) or more persons;
 - Must be given in “ample time” to allow public attendance AND
 - Must be disseminated in a manner reasonably calculated to notify the general public in the area where the public proceeding will be held²⁴
- Emergency Meeting
 - Notice requirement is still needed;
 - Must be provided to local representative of media whenever practicable
 - Notice must include
 - Time
 - Location of meeting AND
 - Be provided by same – or faster – means used to notify the members of the public body or agency hosting the public proceeding²⁵

When is a public proceeding considered closed?

- Executive sessions – or closed public proceeding meetings – are permitted IF
 - Voted on specified subjects
 - After a public recorded vote of 3/5 of the members present and voting²⁶
- Executive sessions are **limited** to what can be discussed.
 - Examples include²⁷
 - Discussions regarding suspension or expulsion of a student;
 - Certain employment actions;
 - Acquisition, use or disposition of public property;
 - Consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and

²² 5 M. R. S. A. §§ 8002 (1) and 9059.

²³ 1 M. R. S. A. § 403.

²⁴ 1 M. R. S. A. § 406.

²⁵ 1 M. R. S. A. § 403.

²⁶ 1 M. R. S. A. § 405 (1)-(5).

²⁷ See 1 M. R. S. A. § 405 (6) for a full list of permitted deliberations within an executive session.

- Discussion of documents that are confidential by statute
- Prohibited from giving final approval to²⁸
 - Any ordinance
 - Orders
 - Rules
 - Resolutions
 - Regulations
 - Contracts
 - Appointments, or
 - Other official actions
- If improper business has been conducted during an executive session
 - Any person may appeal to any Maine Superior Court.
 - If the court finds the body or agency acted illegally
 - Action taken by the body or agency will be declared **null and void**
 - Officials responsible will be subject to the penalties provided in the Act²⁹

If you decide to attend a public meeting, can you...?

- Record the public proceeding?
 - Yes. The FOAA allows for individuals to make written, taped or filmed records of a public proceeding or to broadcast it live as long as it doesn't interfere with the orderly conduct of the proceedings.³⁰
 - Body or agency having the public proceeding can make reasonable rules or regulations to govern the recording activities so long as they do not defeat the purpose of FOAA.³¹
- Speak at the public meetings?
 - It depends. The FOAA *does not* require public participation at open meetings. If public participation is permitted, public body or agency may adopt reasonable rules to ensure meetings are conducted in a fairly and orderly manner
 - Example: A rule allowing that same amount of time to each person willing to speak

²⁸ 1 M. R. S. A. § 405(2).

²⁹ 1 M. R. S. A. § 409 (2).

³⁰ 1. M. R. S. A. § 404.

³¹ Id.

Chapter 4: Right-to-Know Advisory Committee

What is the Right-to-Know Advisory Committee?

The RTKAC³² is an on-going advisory council

- With oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Right of Access Laws
- Created to serve as resource and advisor about Maine's FOAA

What are the duties of the RTKAC?

- Specific duties include
 - Providing guidance in ensuring access to public records and public proceedings;
 - Serve as central source and coordinator of information about FOAA
 - Support provision of information about public access to records and proceedings via the Internet;
 - Serve as resource of support training and educating about the FOAA; and
 - Report annually to discuss the public's access to proceedings and records to
 - The Governor
 - Joint Standing Committee on Judiciary; and
 - Chief Justice of Supreme Judicial Court

Who serves on the RTKAC?

The RTKAC is comprised of thirteen (13) members, each with different terms. The members include³³:

- Senator from Joint Standing Committee;
- Representative of municipal interests;
- Representatives of school interests;
- Representative of newspaper publishers

³² The Maine Right-to-Know Advisory Committee was created by Public Law 2005, chapter 631.

³³ See 1 M. R. S. § 411. *Appendix D* for a list of current members.

Appendix

Department	Contact	Phone	TTY	Address	City	ZIP Code
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Draft

<u>Administrative and Financial Services -</u> <u>Office of the Commissioner</u>	<u>David Emery</u>	624-7800	888-577-6690	Cross Building	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Bureau of Alcoholic Beverages and Lottery Operations</u>	<u>Tim Poulin</u>	287-6750	888-577-6690	10 Water Street	Hallowell	04347
<u>Administrative and Financial Services -</u> <u>Service Centers</u>	<u>Sandra Harper</u>	624-7802	888-577-6690	111 Sewall St, 78 State House Station	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Bureau of General Services</u>		624-7344	888-577-6690	Cross Building, 77 State House Station	Augusta	04333
<u>Administrative and Financial Services -</u> <u>State Controller</u>	<u>Terry Brann</u>	626-8423	888-577-6690	Cross Building, 14 State House Station	Augusta	04333
<u>Administrative and Financial Services -</u> <u>State Budget Officer</u>	<u>Dawna Lopatosky</u>	624-7810	888-577-6690	Cross Building 3rd Floor	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Office of Information Technology</u>	<u>Greg McNeal</u>	624-7568	888-577-6690	26 Edison Drive, 145 State House Station	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Bureau of Human Resources</u>	<u>Joyce Oreskovich</u>	287-4447	888-577-6690	4 State House Station	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Office of Employee Relations</u>	<u>Joyce Oreskovich</u>	287-4447	888-577-6690	45 Memorial Circle	Augusta	04333
<u>Administrative and Financial Services -</u> <u>Maine Revenue Services</u>	<u>John Sagaser</u>	624-9536	888-577-6690	26 Edison Drive	Augusta	04333
<u>Agriculture</u>	<u>Melanie Littlefield</u>	287-3419		Deering Building, 28 State House	Augusta	04333

<u>Attorney General's Office</u>	<u>Phyllis Gardiner</u>	626-8800	877-887-3878	Station 6 State House Station	Augusta	04333
<u>Audit</u>	<u>Michael Poulin</u>	624-6266		66 State House Station	Hallowell	04333
<u>Conservation</u>	<u>Eliza Townsend</u>	287-4901	888-577-6690	22 State House Station	Augusta	04333
<u>Conservation</u>	<u>Gale Ross</u>	287-4900	888-577-6690	22 State House Station	Augusta	04333
<u>Corrections</u>	<u>Judy Plummer</u>	287-4386	888-577-6690	Tyson Bldg. AMHI	Augusta	04333
<u>Defense, Veterans and Emergency Management - Maine Emergency Management Agency</u>	<u>Lynette Miller</u>	624-4420	877-789-0200	45 Commerce Drive	Augusta	04333
<u>Defense, Veterans and Emergency Management - Bureau of Veterans' Affairs</u>	<u>Don Lagace</u>	626-4271		33 State House Station, Camp Keyes	Augusta	04333
<u>Defense, Veterans and Emergency Management - Army and Air National Guard</u>	<u>Kevin McDougall</u>	430-5012		38 State House Station, Camp Keyes	Augusta	04333
<u>Economic and Community Development</u>	<u>Brian Hodges</u>	624-9804	888-577-6690	Cross Building	Augusta	04333
<u>Education</u>	<u>Greg Scott</u>	624-6620	888-577-6690	Cross Building, 23 State House Station	Augusta	04333
<u>Environmental Protection</u>	<u>Pete Carney</u>	287-4305	800-492-0859	17 State House Station, Hospital Street	Augusta	04333
<u>Finance Authority of Maine</u>	<u>Beth Bordowitz</u>	623-3263	626-2717	5 Community Drive P.O. Box 949	Augusta	04332
<u>Governor, Office of the</u>	<u>Dan Billings</u>	287-3531	287-6548	1 State House Station	Augusta	04333
<u>Health and Human Services</u>	<u>Marina Thibeau</u>	287-4252	800-606-0215	221 State Street 11 State House Station	Augusta	04333

<u>Inland Fisheries and Wildlife Office of the Commissioner</u>	<u>Andrea Erskine</u>	287-5201		284 State Street	Augusta	04333
<u>Labor</u>	<u>Adam Fisher</u>	621-5095	800-794- 1110	54 State House Station	Augusta	04333
<u>Maine Housing Authority</u>	<u>Linda Uhl</u>	626-4600	800-452- 4603	353 Water Street	Augusta	04330
<u>Maine Commission on Governmental Ethics</u>	<u>Paul Lavin</u>	287-3024		135 State House Station	Augusta	04333
<u>Maine Commission on Indigent Legal Services</u>	<u>John Pelletier</u>	287-3254		154 State House Station	Augusta	04333
<u>Maine Arts Commission - Programs</u>	<u>Donna McNeil</u>	287-2714	877-887- 3878	25 State House Station, 193 State Street	Augusta	04333
<u>Maine Arts Commission - Business Administration</u>	<u>Gail Waddell</u>	287-5633	877-887- 3878	Maine State Library State Office Complex	Augusta	04333
<u>Maine International Trade Center</u>	<u>Janine Bisaillon- Cary</u>	541-7400		511 Congress Street, Suite 100	Portland	04101
<u>Maine Historic Preservation Commission</u>	<u>Earle Shettleworth</u>	287-2132		55 Capitol Street, 65 State House Station	Augusta	04333
<u>Maine Human Rights Commission</u>	<u>John Gause</u>	624-6051	888-577- 6690	51 State House Station	Augusta	04333
<u>Maine Health Data Organization</u>	<u>Alan Prysunka</u>	287-6723		151 Capitol Street, 102 State House Station	Augusta	04333
<u>Maine Technology Institute</u>	<u>Betsy Biemann</u>	582-4790		405 Water Street, Suite 300	Gardiner	04345
<u>Maine Turnpike Authority</u>	<u>Jon Arey</u>	871-7771		2360 Congress St	Portland	04102
<u>Marine Resources</u>	<u>Donna Hall</u>	624-6553	287-4474	Winthrop Street	Hallowell	04347 -0021
<u>Professional and Financial Regulation - Office of the Commissioner</u>	<u>Anne Head</u>	624-8511	888-577- 6690	122 Northern Avenue	Gardiner	04333 -0035
<u>Professional and Financial</u>	<u>John Barr</u>	624-8561	888-577-	122 Northern	Gardiner	04333

Regulation - <u>Bureau of Financial Institutions</u>			6690	Avenue		-0035
Professional and Financial Regulation - <u>Office of Securities</u>	<u>Judy Shaw</u>	624-8551	888-577-6690	76 Northern Avenue	Gardiner	04345
Professional and Financial Regulation - <u>Office of Licensing and Registration</u>	<u>Anne Head</u>	624-8633	888-577-6690	122 Northern Avenue	Gardiner	04333-0035
Professional and Financial Regulation - <u>Bureau of Insurance</u>	<u>Tom Record</u>	624-8424	888-577-6690	124 Northern Avenue, 34 State House Station	Gardiner	04345
Professional and Financial Regulation - <u>Bureau of Consumer Credit Protection</u>	<u>Will Lund</u>	624-8527	888-577-6690	122 Northern Avenue	Gardiner	04333-0035
<u>Public Advocate</u>	<u>Patty Moody-D'Angelo</u>	287-2447		103 Water Street 3rd Floor	Hallowell	04347
<u>Public Safety</u>	<u>Christopher Parr</u>	624-7205	287-3659	45 Commerce Drive - Suite 1	Augusta	04333
<u>Public Utilities Commission</u>	<u>Joanne Steneck</u>	287-1390	800-437-1220	242 State Street	Augusta	04333
<u>Secretary of State</u>	<u>Chales E. Summers, Jr.</u>	626-8400	207-624-9105	148 State House Station	Augusta	04333
<u>State Planning Office - Office of the Director</u>	<u>Tony Van Den Bossche</u>	287-1474		38 State House Station, 184 State Street	Augusta	04333
<u>State Planning Office - Office of Energy Independence and Security</u>	<u>John Kerry</u>	287-3292		38 State House Station, 184 State Street	Augusta	04333
<u>Transportation</u>	<u>Toni Kemmerle</u>	624-3024	888-516-9364	Child Street, 2nd Level	Augusta	04333
<u>Treasurer</u>	<u>Barbara Rath</u>	624-7479	888-577-6690	111 Sewall St., Cross Building	Augusta	04333
<u>Workers' Compensation Board</u>	<u>John Rohde</u>	287-7091	877-832-5525	AMHI Deering Building	Augusta	04333

Draft

Date
Name
Company Name (if applicable)
Address

Dear (FOAA Officer):

Pursuant to the Maine Freedom of Access Act, (1 M. R. S. A. § 401 *et seq.*) I respectfully request access to [insert a specific, detail description of the material you would like to request]. I believe these records are in the custody of [try to identify the specific office/department/ bureau where record(s) is/are located].

I am willing to pay all lawful and reasonable costs associated with this request. Please notify me in advance what the costs will be.

If you intend to deny this public interest in whole or in part, I request that you advise me, in writing, of the particular statutory exemption upon which you are relying, and an explanation for doing so, as required by Chapter 13 of the Maine Statutes. Also, if the exemption you are claiming applies to only a portion of a record please delete the exemption section and release the remainder of the records as required by law.

In light of the nature and importance of the records requested, please make them available within a reasonable time. If you have any questions about this request, please call me at [phone number].

Thank you in advance for processing my request.

Sincerely,

Concerned Citizen

Appendix C: List of Maine Superior Courts

Town	Address	Phone #	TTY-only #
<u>Alfred</u>	45 Kennebunk Rd., P.O. Box 160, Alfred 04002	(207) 324-5122	(207) 459-7860
<u>Auburn</u>	2 Turner St., P.O. Box 3660, Auburn 04212	(207) 330-7500	(207) 783-5458
<u>Augusta</u>	95 State Street, Augusta 04330	(207) 624-5800	(207) 623-0477

Draft

Right to Know Advisory Committee P.L. 2005, Chapter 631

Appointment(s) by the Governor

Michael Cianchette

33 Winn Road Cumberland, ME 04021 207 287-3543

Representing State Government Interest

Richard P. Flewelling

Maine Municipal Assoc 60 Community Drive Augusta, ME 04330

Representing Municipal Interests

Harry Pringle

Drummond Woodsum & MacMahon 245 Commercial St PO Box 9781 Portland, ME 04104-5081
207 772-1941

Representing School Interests

Appointment(s) by the President

Shenna Bellows

Maine Civil Liberties Union 401 Cumberland Ave. Portland, ME 04101
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Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exceptions 38 and 39

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. McCormick and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection 13 relating to medical data of the Community Health Access Program.

The Department of Health and Human Services made a recommendation to the Subcommittee that the specific confidentiality provisions be repealed because the statutes have never been used, and also suggested to the Subcommittee that all of sections 3188 and 3192 should be repealed. The Subcommittee declined to recommend that the sections be repealed in their entirety because the underlying policy issue is beyond the scope of the Subcommittee's charge. As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the recommendation that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed because the programs have never been implemented.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

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Sec. 3. **22 MRSA § 8707** is amended to read:

§8707. Public access to data

The board shall adopt rules to provide for public access to data and to implement the requirements of this section.

1. Public access; confidentiality. The board shall adopt rules making available to any person, upon request, information, except privileged medical information and confidential information, provided to the organization under this chapter as long as individual patients are not directly or indirectly identified through a reidentification process. The board shall adopt rules to protect the identity of certain health care practitioners, as it determines appropriate, except that the identity of practitioners performing abortions as defined in section 1596 must be designated as confidential and must be protected. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

2. Notice and comment period. The rules must establish criteria for determining whether information is confidential clinical data, confidential financial data or privileged medical information and adopt procedures to give affected health care providers and payors notice and opportunity to comment in response to requests for information that may be considered confidential or privileged.

3. Public health studies. The rules may allow exceptions to the confidentiality requirements only to the extent authorized in this subsection.

A. The board may approve access to identifying information for patients to the department and other researchers with established protocols that have been approved by the board for safeguarding confidential or privileged information.

B. The rules must ensure that:

(1) Identifying information is used only to gain access to medical records and other medical information pertaining to public health;

(2) Medical information about any patient identified by name is not obtained without the consent of that patient except when the information sought pertains only to verification or comparison of health data and the board finds that confidentiality can be adequately protected without patient consent;

(3) Those persons conducting the research or investigation do not disclose medical information about any patient identified by name to any other person without that patient's consent;

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(4) Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the research for which approval was granted; and

(5) The protocol for any research is designed to preserve the confidentiality of all health care information that can be associated with identified patients, to specify the manner in which contact is made with patients and to maintain public confidence in the protection of confidential information.

C. The board may not grant approval under this subsection if the board finds that the proposed identification of or contact with patients would violate any state or federal law or diminish the confidentiality of health care information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

4. Confidential or privileged designation. ~~The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the former Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser and a provider of health care that was designated as confidential only for a limited time under the rules of the former Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules.~~ The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

5. Rules for release, publication and use of data. The rules must govern the release, publication and use of analyses, reports or compilations derived from the health data made available by the organization.

Summary

This amendment removes language related to confidentiality of data held by the former Maine Health Care Finance Commission. The amendment retains language authorizing the Maine Health Data Organization board to determine certain financial data submitted to the organization by health care providers to be confidential if disclosure of the data will place the provider at a competitive economic disadvantage.

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Sec. 4. 24-A MRSA § 2393 is amended to read:

§2393. Initial funding of pool

1. Payments by insurers. Insurers shall pay to the pool on or before January 1, 1996 the amount of \$65,000,000, as follows.

A. Major insurers shall pay to the pool 90% of the \$65,000,000 payment, which is \$58,500,000. Each major insurer shall pay to the pool that major insurer's allocated share of the payment required by this paragraph as determined in accordance with the following:

(1) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was less than 3.4% according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay to the pool \$4,906,000;

(2) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was equal to or greater than 3.4%, according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay \$4,906,000 less one of the following credits:

(a) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 25% for each of the calendar years 1989 and 1990, then \$1,811,000;

(b) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for each of the calendar years 1989 and 1990, then \$1,772,000;

(c) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for either calendar year 1989 or 1990, then \$807,000;

(d) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 7.5% for each of the calendar years 1989 and 1990, then \$596,000; or

(e) For any other major insurer that qualifies for credit under this subparagraph, \$289,000;

(3) One or more major insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraph (1) or (2); except that:

(a) A major insurer may not pay less than the allocated share under subparagraph (1) or (2), unless the written agreement is executed by all major insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

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(b) The total amount of timely payments to the pool by major insurers is equal to or greater than \$58,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain major insurers that provides for:

(i) Timely payments to the pool by major insurers that are equal to \$58,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraph (1) or (2) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(4) If the total amount paid according to the requirements of subparagraphs (1), (2) and (3) exceeds \$58,500,000, the pool must disburse within 30 days the excess amount by refunding to each major insurer that has timely paid in full at least its allocated share under subparagraph (1) or (2) in direct proportion to the amount that each major insurer paid to the pool as part of the total major insurers' payment required by this paragraph.

B. Minor insurers shall pay to the pool 10% of the \$65,000,000 payment, which is \$6,500,000. Each minor insurer shall pay to the pool an allocated share of the payment required by this paragraph as determined in accordance with the following.

(1) Except as provided in subparagraph (2), an allocated share equal to the sum of the amounts described in divisions (a) to (c) must be paid to the pool.

(a) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1989 pay 59% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(b) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1990 pay 38% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(c) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1991 pay 3% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(2) A minor insurer that qualifies for a partial exemption under this subparagraph shall pay to the pool the greater of \$10,000 or 2% of the minor insurer's average annual after-tax adjusted earnings for the 3 calendar years immediately prior to enactment of this chapter as reported in the minor insurer's annual statement filed with the superintendent. A minor insurer qualifies for a partial exemption from the per capita share payment required by this paragraph if, for the 3 calendar years immediately prior to enactment of this chapter, as reported in the minor insurer's annual statement filed with the superintendent, the minor insurer's:

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- (a) Average annual after-tax adjusted earnings were less than \$2,000,000; and
- (b) Surplus as to policyholders did not exceed \$12,500,000.
- (3) A minor insurer that has not received a partial exemption under subparagraph (2) is entitled to participation credits determined as follows.
 - (a) For any policy year beginning on or after January 1, 1989, the share for each minor insurer authorized to write workers' compensation insurance in the year to which the calculation in this division pertains is reduced by .05% for each .10% that its participation ratio for the year to which the assessment relates exceeds its participation ratio for the base period as calculated by dividing the minor insurer's net direct written premium for the base period by the total minor insurer's net direct written premium for the base period. For purposes of this division, "base period" means the calendar years 1983 to 1986. The participation ratio for the year to which the assessment relates is calculated by dividing the minor insurer's net direct written premium in that calendar year by the total net direct written premium of minor insurers that were authorized at any time during that year;
 - (b) Credits earned by a minor insurer may not result in a minor insurer's participation ratio being adjusted to less than 1/2 of its otherwise allocated share;
 - (c) For a minor insurer not authorized to write workers' compensation insurance in 1986, its adjusted participation ratio is 1/2 of its participation ratio in the year to which the calculation applies;
 - (d) Any deficiency must be distributed among all minor insurers in proportion to the adjusted participation ratio, after credit adjustments; and
 - (e) For purposes of this subparagraph, "adjusted participation ratio" means a minor insurer's participation ratio as calculated in accordance with this subparagraph and after application of any credits. For purposes of this subparagraph, net direct written premium does not include premiums for residual market risks reinsured by the pool or retrospective rating plan adjustments on policies effective prior to January 1, 1988.
- (4) The total amount of the differences between the following must be paid by those minor insurers that actually paid their allocated share as of January 1, 1996 by allocating the difference to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996:
 - (a) The otherwise allocated share payments under subparagraph (1); and
 - (b) The payments made by minor insurers that qualify for a partial exemption as provided in subparagraph (2) and any participation credits under subparagraph (3).
- (5) In the event a minor insurer for any reason fails to pay its allocated share, as described in this paragraph, by January 1, 1996, then the pool may charge the deficiency resulting from those uncollected amounts to all minor insurers that actually pay their allocated share as of January 1, 1996 by allocating that deficiency to those minor insurers in the same proportion as each such minor

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insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996. Those minor insurers are subrogated to the pool's right to collect such amounts from the delinquent minor insurer.

(6) One or more minor insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraphs (1) to (4), except that:

(a) A minor insurer may not pay less than the allocated shares under subparagraphs (1) to (4) unless the written agreement is executed by all minor insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by minor insurers is equal to or greater than \$6,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain minor insurers that provides for:

(i) Timely payments to the pool by minor insurers that are equal to \$6,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraphs (1) to (4) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(7) If the total amount paid according to the requirements of subparagraphs (1) to (6) exceeds \$6,500,000, the pool must disburse within 30 days the excess amount by refunding to each minor insurer that has timely paid in full at least its allocated share under subparagraphs (1) to (4) in direct proportion to the amount that each minor insurer paid to the pool as part of the total minor insurers' payment required by this paragraph.

C. The pool shall bill and collect from each insurer the allocated share established by paragraphs A and B. If an insurer has not timely paid its allocated share in full to the pool on or before January 1, 1996, then the insurer is considered delinquent and the following applies.

(1) The pool has all the rights, powers and authority to take all necessary and appropriate action, as determined in the pool's discretion, against the delinquent insurer to collect any amounts not paid as and when due, and any deficiency is assessed interest at the rate of 10% per annum from January 1, 1996 until full payment from the insurer is received by the pool. The pool is entitled to an award of and reimbursement from any delinquent insurer of the costs of enforcement and collection of any amounts not paid as and when due, including all costs and expenses, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's enforcement and collection efforts.

(2) If the pool has received \$58,500,000 from major insurers or \$6,500,000 from minor insurers, valued as of January 1, 1996, the pool shall provide prompt written notice of this fact to insurers in the same category, either major or minor.

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Within 90 days following a request, the pool shall assign all such rights, powers and authority, including the entitlement to costs and expenses, to any insurers in the same category of the delinquent insurer that have requested an assignment and timely paid in full at least the allocated share established by paragraphs A and B.

(3) The pool has the right to set off any amounts due under this chapter to the pool from a delinquent insurer against any sums credited by or due from the pool to the delinquent insurer and against any other property of the delinquent insurer in the possession or under the control of the pool.

(4) Regardless of whether any action is taken pursuant to subparagraphs (1) to (3), the superintendent is authorized to exercise all authority as may be provided by and in accordance with law to take appropriate action against any delinquent insurer. In addition to any other authority the superintendent may possess under law, the superintendent upon notice and hearing may suspend a delinquent insurer's authority to transact the business of insurance in the State for so long as the insurer remains delinquent. The authority granted to the superintendent under this paragraph and jurisdiction vested in the bureau are concurrent with other actions by other parties authorized in this paragraph.

(5) Any collection by or on behalf of the pool, or amounts obtained by setoff with respect to a delinquent insurer, are retained by the pool, until the insurers in the same category as the delinquent insurer have paid the total amount required for that category, plus interest pursuant to subparagraph (1) and costs and expenses of the pool for collection in an amount not to exceed the delinquent share, valued as of January 1, 1996, to the pool. Any excess must be distributed within 90 days among the insurers in the same category as the delinquent insurer that have timely paid in full at least the allocated share established by paragraphs A and B in direct proportion to that insurer's payment to the pool as part of the total payments required by paragraph A or B, except that any collection on behalf of the pool as the result of an assignment pursuant to subparagraph (2) must be distributed as agreed among the insurers that receive the assignment from the pool.

(6) No defense or substantive argument that could have been raised or asserted related to an insurer's status as a major insurer or minor insurer or any purported contractual rights under prior or existing law is extinguished or otherwise abridged in any proceeding against a delinquent insurer instituted under subparagraphs (1) to (5).

2. Payments by employers. Employers shall pay to the pool the following amounts.

A. Employers shall pay initial surcharges, in the manner described in this subsection, in an aggregate amount equal to \$110,000,000, calculated on a net present value basis using January 1, 1995 as the valuation date, a discount rate of 5% and the midpoint of each calendar quarter as the date of actual receipt of surcharge proceeds remitted to the pool for each calendar quarter. Proceeds included in determining when the \$110,000,000 initial surcharge is fully paid consist of:

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- (1) All proceeds from surcharges under this chapter on policies with effective dates on or after July 1, 1995 and surcharges under this chapter on self-insured employers with plan years commencing on or after July 1, 1995; and
 - (2) All proceeds from surcharges actually received in immediately available funds by the pool after 5:00 p.m., September 30, 1995, whether the proceeds result from a surcharge under this chapter or under laws existing prior to enactment of this chapter.
- B. Proceeds from surcharges under existing laws actually received in immediately available funds by the pool on or before 5:00 p.m., September 30, 1995 may not be credited against the initial surcharge requirement.
- C. The pool shall maintain records reflecting actual dates of receipt of proceeds from surcharges sufficient to enable the net present value calculation.
- D. The initial surcharges must be paid in accordance with the following provisions.
- (1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.
 - (2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.
 - (a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, subparagraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit

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pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%
1992	6.01%

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the

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superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administrator shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

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(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator. All information relating to a self-insured employer provided pursuant to this paragraph and in the possession of the board or superintendent continues to be confidential until that information is destroyed.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge installment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes of name or organizational structure; and other information necessary to determine successorship.

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- (ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.
- (g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.
- (i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.
- (ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.
- (iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.
- (h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.
- (i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.
- (3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year

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period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

- (a) A 5% discount rate;
- (b) The first day of the first plan year or policy year starting on or after July 1, 1995; and
- (c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year.

E. The initial surcharge percentage may be adjusted by the pool in accordance with the following provisions.

(1) Each July 1st beginning in 2003, the board shall establish a surcharge percentage to be imposed on all workers' compensation insurance policies issued or renewed on or after that date until the effective date of any subsequent adjustment in the surcharge percentage established by the board; except that, if supplemental surcharges and assessments have commenced under section 2394, no further adjustments may be made under this subparagraph. The surcharge must be at a level determined by the board to be sufficient to produce cash receipts over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis over that period, produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making that determination, the board shall employ and rely upon the advice of professional and consulting services, including services available through the pool's internal staff, as the board determines necessary.

(2) If the surcharge percentage established under this subparagraph exceeds 6.32%, then a prepaid employer shall pay surcharges for that future assessment period at the same rate as those employers who paid annually, based upon the employer's surchargeable premium for the policy year or plan year to which the increased surcharge percentage applies. A prepaid employer may take a credit for the surcharges prepaid for that assessment period pursuant to section 2393,

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Proposed draft language changes

subsection 2, paragraph D, subparagraph (3) in an amount equal to the net present value calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii). If the surcharge percentage is less than 6.32% for that future assessment period, then the pool shall refund to a prepaid employer an amount equal to the difference between the value of the lump-sum surcharge paid for the future assessment period calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii) and the amount of surcharge due based upon the adjusted surcharge percentage and applicable surchargeable premium. For purposes of this subparagraph, "prepaid employer" means an employer who has elected to pay surcharges on a lump-sum basis pursuant to paragraph D, subparagraph (3).

(3) The board has authority to make interim adjustments in the surcharge percentage on or after July 1, 2003, to be effective on dates other than July 1st as specified by the board, to the extent considered necessary by the board to produce sufficient cash receipts from surcharges over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis to the pool over the ensuing 24 months, will be sufficient to meet the pool's anticipated cash requirements over that period.

(4) In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12-month period.

F. The surcharges required by this subsection are considered premium for cancellation and nonrenewal purposes only and are not subject to premium tax, Maine Insurance Guaranty Association assessments, agents' commissions or other payments required on insurance policy premiums.

G. Employer surcharges required by this chapter are suspended if:

(1) The board determines that the pool's assets are adequate to satisfy all remaining obligations, including any necessary repayment to insurers that satisfy the requirements of subparagraph (2); and

(2) The insurers and employers have been repaid by the pool in amounts necessary to produce a ratio of actual surcharges under this subsection paid by employers calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5% to actual payments by insurers to the pool under subsection 1, valued as of January 1, 1996, not including employer surcharges remitted to the pool by insurers, that is the same as 11 to 6.5, for employers and insurers respectively.

H. If the board suspends initial surcharges and the pool subsequently requires additional assets to satisfy remaining obligations, the board shall order additional initial surcharges consistent with this subsection. The board shall review the relationship between the pool's assets and liabilities as often as determined necessary by the board, but at least annually. Projections of assets and liabilities contained in any quarterly or annual statements of operation prepared by or at the direction of the board do not constitute a determination under this subsection.

Public Records Exceptions Subcommittee
Proposed draft language changes

3. Payments by Maine Insurance Guaranty Association. The association shall pay to the pool \$1,538,039 on or before February 15th, May 15th, August 15th, and November 15th of each year for 40 consecutive calendar quarters beginning August 15, 1996.

A. Each payment made by the association to the pool under this subsection is treated as a covered claim pursuant to section 4435, subsection 4, except that any provision or authority for the association to seek reimbursement or recoupment from any source other than by assessments to association member insurers does not apply. This section does not limit or impair a member insurer's right to recoupment under section 4447.

B. The quarterly payments by the association to the pool as required by this subsection must be made regardless of the financial condition or actual or projected cash requirements of the pool.

Summary

This amendment clarifies that information provided by self-insurers to the Maine Residual Market Pool or the Bureau of Insurance related to payment of workers' compensation residual market surcharges continues to be confidential until that information is destroyed.

Public Records Exceptions Subcommittee
Proposed letter to IFS Committee

Exception 112

Sen. Rodney L. Whittemore
Rep. Wesley E. Richardson
Joint Standing Committee on Insurance and Financial Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. Whittemore and Rep. Richardson:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered one exceptions in Title 24-A, section 6807, subsection 7 relating to examination and investigation information maintained by the Bureau of Insurance with respect to life settlement or viatical settlement contracts. The Bureau of Insurance and other interested parties recommended that no changes be made to this exception. The Subcommittee agreed with the Bureau's recommendation that no changes be made, but one Subcommittee member voted against the recommendation. The Subcommittee member's objection is based on the breadth of the exception because it states that all examination and investigation information is "...confidential by law and privilege, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action." See 24-A MRSA § 6807, sub-§7, ¶ B. The language is also inconsistent with the statutory language governing the confidentiality of examination records maintained or collected by other state agencies, including the provision governing examination reports of the Bureau of Insurance in Title 24-A, sections 225, 226 and 227. .

As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the Subcommittee's recommendation and to make you aware of the inconsistent statutory language used in Title 24-A, section 6807, subsection 7.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #15

Sec. 1. 22 MRSA § 1555-D, sub-§ 1 is repealed:

§1555-D. Illegal delivery of tobacco products

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer.

~~1. **Lists.** The Attorney General shall maintain lists of licensed tobacco retailers and known unlicensed tobacco retailers. The Attorney General shall provide to a delivery service lists of licensed tobacco retailers and known unlicensed tobacco retailers. The list of known unlicensed tobacco retailers is confidential. A delivery service that receives a list of known unlicensed tobacco retailers shall maintain the confidentiality of the list.~~

2. Penalty. The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

3. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

4. Affirmative defense. It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

Summary

Public Records Exceptions Subcommittee

Proposed draft language changes

This amendment repeals the provision that designates as confidential lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. The Attorney General no longer maintains such lists as a result of a Supreme Court decision that State law is preempted by federal law.

Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exception # 15

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. McCormick and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered an exception in Title 22, section 1555-D, subsection 1 relating to lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. Upon reviewing the exception at the request of the Subcommittee, the Attorney General's Office recommended that the confidentiality provision be repealed as the lists required by the statute are no longer collected or maintained as a result of a U.S. Supreme Court decision ruling the Maine's law is preempted under federal law. In light of the Supreme Court ruling, the entire statute, section 1555-D, prohibiting the illegal delivery of tobacco products is not enforceable. In addition to the confidentiality provision in subsection 1, the Attorney General's Office also recommended that all of section 1555-D be repealed.

The Subcommittee declined to recommend that all of section 1555-D be repealed in its entirety because the underlying policy issue is beyond the scope of the Subcommittee's charge. As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the recommendation that section 1555-D be repealed as a result of the U.S. Supreme Court's decision.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 37 CME: Missing persons

22 §3034. Missing persons

1. Files; information. The Office of Chief Medical Examiner shall maintain files on missing persons sufficient for the purpose of identification when there is reason to suspect that those persons may not be found alive. These files may include such material as medical and dental records and specimens, details of personal property and physical appearance, samples of hair, fingerprints and specimens that may be useful for identification. The Chief Medical Examiner may require hospitals, physicians, dentists and other medical institutions and practitioners to provide information, samples and specimens. A person participating in good faith in the provision of the information, samples or specimens under this section is immune from any civil or criminal liability for that act or for otherwise cooperating with the Chief Medical Examiner.

2. Confidentiality; disclosure. All Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

3. Reporting of missing persons. Missing persons may be reported directly to the Office of Chief Medical Examiner by interested parties. Law enforcement agencies or other public agencies that receive reports of missing persons, or that gain knowledge of missing persons, shall report that information to the Office of Chief Medical Examiner. Law enforcement agencies shall report all attempts to locate missing persons to the Office of Chief Medical Examiner. All absences without leave by individuals from state institutions must also be reported to the Office of Chief Medical Examiner when there exists a reasonable possibility of harm to that individual.

4. Cooperation. All state and law enforcement agencies and public and private custodial institutions shall cooperate with the Office of Chief Medical Examiner in reporting, investigating, clearing and gathering further information and materials on missing persons.

Public Records Exceptions Subcommittee
Proposed draft language changes

5. Release to assist in search. The Office of the Chief Medical Examiner may release confidential information and materials about a missing person that is gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

SUMMARY

This amendment gives the Office of the Chief Medical Examiner the discretion to release confidential information and materials about a missing person if the Chief Medical Examiner determines that releasing the information or materials may assist in the search for that missing person.

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Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

Sec. . 23 MRSA §8115 is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. . 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates of costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Public Records Exceptions Subcommittee

Proposed draft language changes

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

SUMMARY

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential, and do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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Reflects 11/17
Subcommittee Meeting

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

* = 11/17 subcommittee agenda

O = approved by subcommittee

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
15	22	1555-D	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	DHHS OAG	<ul style="list-style-type: none"> No requests RECOMMEND: Repeal subsection 	11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS	11/17 approved 3-0
18	22	1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	11/17 letter
19	22	1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	11/17 letter

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
20	1711-C	2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS	<ul style="list-style-type: none"> Not a public records exception: info in hands of private entities, allows disclosure to Licensing 	11/4/10: tabled 9/12/11: no change	
21	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS	<ul style="list-style-type: none"> Request generally not denied by identifying information is redacted No changes Surveys must be reviewed by federal CMS before can be released 	11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	OAG	<ul style="list-style-type: none"> Confidential under 10 §1107 and 16 §614 No requests in recent years No change DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association 	11/4/10: tabled 9/12/11: no change 5-1 (SB)	
33	2706	4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58	DHHS	<ul style="list-style-type: none"> Denial of access occurs daily pursuant to statute No changes 	11/4/10: tabled 9/12/11: no change	
34	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS	<ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes 	11/4/10: tabled 9/12/11: no change	

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35	2769	4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS	<ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes 	11/4/10: tabled 9/12/11: no change	
36	3022	8, 12, 13	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information	OAG	<ul style="list-style-type: none"> Police reports and medical records: 3-5 requests per year Suicide notes: requests extremely rare Other materials: available to attorneys in court proceedings Communications : almost never requested No changes 	11/4/10: tabled 9/12/11: no change	

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	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
37	22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	OAG	<ul style="list-style-type: none"> No requests RECOMMEND: give CME discretion to make identifying info public 	11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language	11/17 approved 2-1
38	22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	
39	22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	
44	22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS	<ul style="list-style-type: none"> Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records No changes (must comply with federal law) 	11/4/10: tabled 9/12/11: no change	

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
53	22	8707	Title 22, section 8707, relating to the Maine Health Data Organization	MHDO	<ul style="list-style-type: none"> Data release rules Only two requests, one concerned paying for the data No changes 	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND	
54	22	8754	Title 22, section 8754, relating to medical sentinel events and reporting	MHDO DHHS	<ul style="list-style-type: none"> No requests known Amend: "incidents reports and similar documents" 	11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled	11/17 tabled
55	22	8824	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	

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	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
56	22	8943		Title 22, section 8943, relating to the registry for birth defects	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	
57	23	63		Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	<ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft	11/17 tabled
59	23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18	MTA	<ul style="list-style-type: none"> Violation Enforcement System; records license plates only See 23 §1982 No changes 	11/4/10: tabled 9/12/11: no change	

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60	23	1982	Title 23, section 1982, relating to patrons of the Maine Turnpike	MTA	<ul style="list-style-type: none"> Toll violation system, as well as any other records Comes into play several times a year; never used in litigation in which MTA is a party No changes 	11/4/10: tabled 9/12/11: no change	
61	23	4251	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls	DOT	<ul style="list-style-type: none"> Law became effective July 12, 2010 No experience No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change	

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
62	8115		Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	<ul style="list-style-type: none"> Has not received any requests Four types of records <ul style="list-style-type: none"> Trade secrets Records and correspondence relating to negotiations Estimates of cost on projects put out to bid Employment applications No changes 	11/4/10: tabled 9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA 9/29/11: Tabled, need comments on draft	11/17 approved 2-1

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
66	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> cited 2-3 times per year PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> MHA does not administer Not aware of requests No changes BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MeMedAssn: <ul style="list-style-type: none"> MMA does not administer Don't know how frequent No changes 	9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review	11/17 tabled

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
67	24	2510-A	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ Cited 2-3 times per year ▶ PROPOSED: allow Bd to access peer review reports MeHospAssn: <ul style="list-style-type: none"> ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ substantial experience ▶ not held by public entities so not subject to FOA ▶ no changes 	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Licensing Board 9/29/11: tabled; work with MeMedAssn and MeHospAssn on BdLicMed changes	11/17 tabled

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
68	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ 100-200 times per year ▶ No recommendation (other states allow to be released) BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MedicalMutual: <ul style="list-style-type: none"> ▶ Zero requests ▶ No changes MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ No changes 	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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69	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role <ul style="list-style-type: none">Records filed with the Superior Court BdLicMed: <ul style="list-style-type: none">Cited 100-200 times per year, but doesn't usually receive court documentsNo changes MeHospAssn: <ul style="list-style-type: none">Not aware if requests are made to courtsNo changes BdofDentalEx: <ul style="list-style-type: none">No requests MedicalMutual: <ul style="list-style-type: none">No direct role in administrationNo changes MeMedAssn: <ul style="list-style-type: none">MMA does not administerNo changes	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
70	24	2857	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role <ul style="list-style-type: none"> Records of Screening Panels (Judicial Branch) BdLicMed: <ul style="list-style-type: none"> Not cited or applied; Bd doesn't receive panel information No recommendation MeHospAssn: <ul style="list-style-type: none"> Only partially administer Not aware about requests No changes BdoDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> No direct role in administration No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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112	24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	BOI	<ul style="list-style-type: none"> To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request No changes 	10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS	

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73	24-A	216	2, 5	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	BOI	<ul style="list-style-type: none"> Records associated with actual or claimed violations of Insurance Code 2-4 requests per month Subpoena, hearing on motion to quash No changes MTLA: no changes 	9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change	
94	24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	BOI	<ul style="list-style-type: none"> No FOA requests No changes 	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists	